

## **Water Classification Workgroup – Meeting #1**

May 17, 2012, 9:00am-12:00pm

Items to include in the next rule:

Robert Brundage:

- Mary West's six amendments proposed at March 9 Clean Water Commission meeting:
  1. Aquatic life UAAs to be developed
  2. Include streams on 1:100k NHD w/ permanent pools and lakes that intersect
  3. Designated uses not intended to apply to SW conveyances/BMPs, etc.
  4. 1:100k NHD streams presumed to have rebuttal presumption of permanent flow or pools
  5. Missouri metallic mineral law be added to list
  6. Definition of biocriteria to be amended

Summary of three main points:

1. Use 1:100k NHD
  2. No presumed uses for wastewater and stormwater conveyances
  3. Need aquatic life use UAA (or "off-ramp")
    - Rule won't go into effect until 6 months after adoption of UAA protocol.
    - Might be helpful to have insights into how EPA feels about Iowa's aquatic life use protocol.
    - Trent Stober: need to get designated uses correct
    - At a future meeting Bob Angelo of EPA will provide an overview of "Waters of the U.S."
    - Bob Angelo indicated that it is unlikely that EPA could approve a rule with a delayed implementation – one that did not go into effect until 6 months after adoption of UAA protocol.
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- Is it even important to define stream segments for protection of designated uses?
  - EPA wants to see some level of default use.
  - MDNR wants to get away from focusing on exceptional, site-specific cases in favor of development of a classification system.
  - In Kansas any stream receiving NPDES discharges are classified.
  - John Hoke will forward information to group about permitted entities >2miles from classified water bodies.
  - Missouri Coalition for the Environment (MCE) wants water classification rule to cover "all waters of the U.S."
  - Bob Angelo:

- There is a benefit to having a register of classified water bodies, along with a geographic/map representation of these.
  - Start with a set of classified water bodies and from there add and subtract using scientifically defensible UAA protocol.
- John Hoke: This is what the previous proposed rule attempted to do
- Ed Galbraith: The rule needs reference biocriteria waters that are representative.
- Bob Angelo: In order to determine reference streams, Kansas used 1:100k+ NHD mapping to assess streams with human impacts.
- Lorin Crandall: If 1:100k covers all permitted entities, then why does the regulated community have a problem with using 1:24k?
- Robert Brundage: Believes no aquatic life present at this scale, so designating default aquatic life uses poses and undue burden.
- Matt Combes: Missouri Department of Conservation (MDC) finds fish in streams with 400 acre watersheds – macroinvertebrates are pretty much everywhere.
- John Hoke: Will Matt do a presentation on this?
- Ed Galbraith: Bottom line is that the group wants to protect “all waters of the U.S.” that are represented at the 1:100k scale, when there is an onramp and off-ramp for applying designated uses.
- Lorin Crandall: MCE wants “all waters of the U.S.” to include wetlands.
- Would wetlands get default Clean Water Act uses?
- If we include wetlands, what criteria do we use to establish uses?
  - Peter Goode will provide information on this – presentation at a future meeting?
- Matt Combes: Central Plains Center for Bioassessment may be a useful place to look when trying to establish wetlands criteria.
- Trent Stober: We need to take a new look at losing stream bacteria criteria.
- Bob Angelo:
  - Kansas has a prohibition against surface waters impacting groundwater.
  - Alluvial aquifers are considered surface water in Kansas.
- Lorin Crandall: Rule should include provisions to have a water body added to classified waters without doing a UAA – need to make it simple and inexpensive for citizens.

- Should we also have a streamlined process for removing designated uses – an off-ramp?
- Is Level I Stream Team training adequate or appropriate for being able to provide data to get streams on or off the classified waters list?
- John Hoke:
  - The UAA protocol should address what level of training is necessary.
  - MDNR with work with MDC to establish what degree of macroinvertebrate presence is appropriate for determining aquatic life use.
- Bob Angelo: Rule needs to clearly define ephemeral, intermittent and permanent at the outset.
- Lorin Crandall: TMDLs and Watershed Management Plans will be affected by increase in number of water bodies with designated uses.
- John Hoke: MDNR can use data from U.S. Army Corps of Engineers in their determinations of what constitutes a “water of the U.S.”.
- Ken Midkiff: Stream classification should include a mandatory review and assessment of Stream Team data.
- Bob Angelo: Rule needs to consider the definitions of aquatic life use classifications and the criteria used – general vs. limited warm water fishery.

#### **Rulemaking schedule:**

Interagency Coordination:	July 25, 2012 – Aug.27, 2012
RIR on public notice:	Sept. 1, 2012 – Oct. 31, 2012
File with SBRFB, JCAR and SOS:	Nov. 15, 2012
Publication in Missouri Register:	Dec. 17, 2012
Public Comment Period:	Dec. 17, 2012 – March 13, 2013
Public Hearing:	March 6, 2013
Response to Comment & Adoption:	May 1, 2013
Order of Rulemaking filed w/ JCAR:	May 10, 2013
Order of Rulemaking filed w/ SOS:	June 10/11, 2013
Order of Rulemaking Published in Mo. Reg.:	July 17, 2013
Rule Published in CSR:	July 31, 2013
Rule Effective:	Aug. 31, 2013

#### **Next meeting:**

- How will increased number of water bodies affect 303(d) listing and TMDL development?
- Discuss tiered aquatic life framework
- Discuss schedule/timeline, along with process framework, for developing UAA protocol.
- Bob Angelo will present overview on “Waters of the U.S.”.